Office Supreme Court, U. S.
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Supreme Court of the United States

October Term, 1926.

No. 61.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY,
Appellant,

v.

THE UNITED STATES.

APPENDIX TO BRIEF FOR APPELLANT.

Being Copy of Opinion of the Comptroller of the Treasury furnished to the Secretary of War of date, May 17, 1907.

BENJAMIN CARTER,
Attorney for Appellant.

(COPY)

OFFICE OF COMPTROLLER
OF THE TREASURY.

TREASURY DEPARTMENT
WASHINGTON
May 17, 1907.

The Honorable,
The Secretary of War.

Sir:—

I am in receipt by your direction under date of April 6, 1907, of the following communication from the Acting Quartermaster General requesting a decision whether or not the party rates mentioned therein should be applied in settlement of the transportation therein, referred to, and whether party rates should inure to the benefit of the Government on future business—which communication reads:

"By authority of the Secretary of War, I have the honor to submit herewith, for decision, a claim of the Missouri, Kansas & Texas Railway Company for the transportation of 11 officers and 194 enlisted men, being the 2nd Battalion of the 26th Infantry, from San Antonio, Tex., to Fort Reno, Okla., via the M. K. & T. Ry. and the Rock Island System.

"This movement was started on short notice, and it was inpracticable to invite bids for the transportation involved. Settlement has been offered the M. K. & T. Ry. Co. on the basis of the party rate applicable between the points mentioned as shown on enclosed fare sheet #322, I.C.C. #840, of two-thirds of the first-class standard rate per capita, $9.80, or a total of $2,009.00. The carriers demand settlement on the basis of the full first-class rate, $14.65 per capita, making a total of $3,003.25.

"The declination of the railway company to accept the rate offered by the Quartermaster's Department is based, as stated by them, on a

decision of the Court of Appeals of the State of Illinois, which decision the Hon. Attorney General of the United States concurred in, and which (as you advised the Secretary of War on July 30th, 1904), was accepted as conclusive by your office.

"In view, however, of the decision of the Interstate Commerce Commission, as promulgated in Circular No. 4–A of that Commission, dated September 29th, 1906, as follows: '*All tariffs and regulations governing the issuance and use of party rate tickets, together with the rules relating to the allowance of free baggage to persons using such tickets, must be regularly filed and published; the privileges so extended must not be limited to any particular class or classes of persons, but must be open to all*'; a decision is respectfully requested whether the party rates published by the Missouri, Kansas & Texas Railway Company in fare sheet #322 (herewith) may not be applied on the settlement of the enclosed account of that company, and also whether, if a decision favorable to the government is rendered, same may not be made applicable under similar conditions to future business."

On the 16th of April last I submitted to the Interstate Commerce Commission the facts set forth in the above communication and requested an expression of their views on the facts as therein stated. The commission under date of the 8th instant, reported as follows:

"Before leaving the city a few days ago on an urgent demand for his presence in an official capacity at Denver, Colorado, the Chairman of the Commission put in my hands your communication to him of April 16th and requested me to reply to it as soon as possible.

"As the general substance of your inquiry is answered in a formal opinion by the Commission on the question of party rates, copies of which are available for distribution for the first time this morning, I now at once send a copy to you. It is perhaps the only answer that the Commission can

make to your inquiries. I ought to add however that the principles announced in our decision are applicable to any party rate transportation had since the amended law went into effect on August 28, 1906. In other words our opinion in no wise alters the law, but is simply our construction of it.

"Upon examing the opinion you will find that it discusses to some extent *United States* v. *Chicago & Northwestern Railway Company*, 127 Fed. 785, and points out that while the tariff in that case required a cash payment for a party rate ticket, the Government purchased the transportation upon requisition. The opinion of the Commission suggests that this fact may be a controlling one as a matter of law, and that the failure of the Government to pay for its transportation in cash as required by the published tariffs may afford the carrier a valid reason for denying to the government the benefit of the reduced rate. But whether that would be a reasonable regulation as against the government is manifestly a point on which we would not care to express any opinion except upon a formal complaint."

After a careful reading of the opinion reached and the letter of the Commissioner, I am unable to determine with certainty what would be its holding relative to the rights of the Government to make payment of the claim submitted on the basis of party rates, taking into consideration the language used by it in its comment on the case of *United States* v. *Chicago & Northwestern Railway Company*, 127 Fed. Rep. 785.

Whether the Commission will hold, where a single ticket is obtained on a transportation request, as I understand was the case in your submission, and where cash is not paid for such ticket but the railroad presents its account for settlement in the usual way, as in the present case—that the Government is entitled to the benefit of party rates, is to my mind involved in doubt. I have my individual opinion as to the right of the Government to demand the benefit of party rates, where a

company gives a rate confined to certain organizations and not including officers and troops of the Government, under the facts and circumstances surrounding the transportation of its officers and troops, secured as they are upon transportation requests and not paid for in cash; but if I should hold that the Government is not so entitled, the Government would be precluded from testing the question of such right in the courts.

I will therefore hold that the Government is entitled to the party rate, upon the facts in question in the case submitted, and suggest that in the future where a party rate is desired by the Government and a party rate is in force limited to certain organizations and not including Government troops, that the request call for the party rate, and if refused, report the fact of such refusal to the Interstate Commerce Commission for its appropriate action in bringing the question before the courts. If the Commission takes a case before the Courts we will then have the benefit of a binding decision; and in the meantime the Railroad companies can receive the lower, or party rate under protest, which fact will protect their claim for the difference between the party and the higher rate, if the Commission should fail to make a case, or the courts should determine adversely to the apparent view of a majority of the Commission, that party rates where given must be open to the general public, including the officers and soldiers of the Government.

The administrative decision of the Interstate Commerce Commission herein referred to can be procured on application to the Commission.

The enclosures transmitted by you are herewith returned.

Respectfully,
(Signed) R. J. TRACEWELL,
Comptroller.

(12 inclo.)
OFFICIAL SEAL Q. M. G. O.
A TRUE COPY, CHARLES C. CLARK,
Captain, Commissary, U. S. Army,
Acting Chief Quartermaster.

December 1, 1926.

Mr. Benjamin Carter,
1400 H Street, N. W.,
Washington, D. C.

Dear Sir:

The copy of decision which you left with me this afternoon and which is returned herewith has been compared with the original press copy of decision on file in this office and is found to be a true copy with certain unimportant corrections noted thereon with lead pencil. The decision is one rendered to the Secretary of War May 17, 1907, by Comptroller of the Treasury, R. J. Tracewell, bearing upon the application of party rates in the settlement of transportation claims.

Respectfully,

(Signed) LUTHER R. GINN,
Assistant Comptroller General
of the United States.